

Servicemembers Civil Relief Act of 2003

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I. Introduction and Purpose for SCRA:

The Servicemembers Civil Relief Act of 2008 (SCRA) replaced the Soldiers' and Sailors' Civil Relief Act of 1940

The SCRA will provide servicemembers relief from certain civil obligations and temporarily suspend judicial and administrative proceedings and transactions involving civil liabilities **when military service materially affects the ability of a servicemember to meet or attend to civil matters.**

The Act is important to those who have recently returned on active duty, or are preparing for a long-term deployment — whose duty situation may impact their ability to meet their previous financial commitments. The SCRA ~~can~~ provides (among other benefits):

- protection from default judgments;
- suspension of judicial and administrative hearings of civil (not criminal) suits against servicemembers;
- limitations for individuals seeking to enforce civil liabilities of members concerning leases, installment contracts, mortgages, and liens; and
- preservation of members' rights with regard to suspension of life insurance premiums, public land rights, taxes, and business obligations.

It protects persons in military service, and in some cases their family members.

Significant specific benefits to servicemembers include:

- Interest in excess of 6% on pre-sev debts is forgiven and not deferred;
- Allowing termination of automobile leases by:
 - Servicemembers called to active duty for 180 days or more,
 - Servicemembers receiving permanent change of station (PCS) orders outside the U.S., or
 - Servicemembers deploying with a military unit for 180 days or more;
- Extending the ability to terminate residential leases for active duty servicemembers receiving PCS orders or being deployed with a military unit for 90 days or more;
- Prohibiting the use by states of a nonresident servicemember's military income in determining the tax rate to be assessed ~~and~~ that member's non-military income or the income of the member's spouse.

Servicemembers seeking more information about their benefits and obligations under the Act should seek legal advice and assistance.

II. Who Is Covered By The SCRA:

- All persons on active duty with the uniformed services, including regular and active reserve;
- Reserve and National Guard personnel who have been activated and are on Federal active duty (whether as volunteers or as a result of involuntary activation), and inductees serving with the armed forces;
- Reserve components who have received orders to report from the date of orders through the date of reporting for military service and beyond while on active military status;
- SCRA does NOT apply to:
 - Reserve or National Guard components NOT on active duty;
 - RETIRED personnel;
 - National Guard troops called duty under STATE orders.

A. Others Who May Benefit From SCRA:

Certain benefits are extended to servicemember dependents.

- A "dependent" is defined as a servicemember's spouse or child, or
- A "dependent" is also an individual for whom the servicemember provided more than one-half of the support during the 180 days preceding an application for relief under the Act.

Under certain conditions, courts may also postpone or suspend actions and may vacate or set-aside a judgment with regard to a surety, guarantor, endorser, accommodation maker, co-maker, or other person who is or may be primarily or secondarily subject to the obligation or liability of the servicemember.

III. The SCRA Protect Servicemember's Credit:

Whenever a servicemember exercises his/her rights under SCRA, the Act prohibits anyone from adversely affecting his/her credit by:

- a determination by a lender that the member is unable to pay;
- a denial or revocation of credit by a creditor;
- a change in the terms of an existing credit arrangement;
- a refusal by a creditor to grant credit to the member;
- an adverse credit report;
- a refusal by an insurer to insure the member or a change in the terms offered or conditions required for the issuance of insurance.

IV. Servicemembers May Waive Their SCRA Rights:

SCRA is intended to protect the financial situation of a servicemember. However, a servicemember may waive his rights under the ACT. A servicemember can only waive the rights and protections under SCRA if:

- there is a **written agreement** of the parties that SCRA will not apply
- the written waiver is **separate and apart** from the actual contract, lease, mortgage, or other document creating the obligation;
- the written waiver **must specify the legal instrument** to which it applies to; and
- the waiver is executed **during or after** the member's period of **active duty**;

A servicemember should always consult the advice of legal counsel before waiving any of his/her rights under SCRA.

V. Servicemembers May Set Aside or Vacate Default Judgments:

The SCRA allows the servicemember to vacate a default judgment against him/her in civil actions where:

- the servicemember defendant **did not make an appearance** in court; and
- the servicemember **did not receive any notice** of the proceedings.

If a defendant has not appeared in the proceedings, the plaintiff must provide to the court a sworn affidavit stating whether or not the defendant is in the military (or not sure).¹

- if it appears the defendant is on active duty:
- the court or administrative body **may not enter a judgment** against the defendant until it has **appointed an attorney to represent the member**;
- the court or administrative body must grant **stay of proceedings for a minimum period of 90 days** upon application by the servicemember's appointed counsel.
- if it appears that the court or administrative body is **not sure** the defendant is on active duty:
- the court or administrative body may require the plaintiff to **file a bond to indemnify** the defendant against any damages that may result in the event the default judgment is later set aside;

¹ Knowingly making such a false affidavit concerning whether a defendant is a military member carries a maximum penalty of one year imprisonment and a fine.

If a default judgment is entered against the servicemember on active duty or within 60 days after termination or release from active duty:

- the servicemember will have up to 90 days from release from termination of active duty to make an application to set aside or vacate the default judgment;²
- upon such an application, the court or administrative body must reopen the judgment to allow the servicemember to defend the action if
 - it appears that the member was materially affected by reason of the military service in making a defense to the action; and
 - the member has a meritorious or legal defense to the action.

VI. Servicemembers May Stay Civil Proceedings:

Where the servicemember defendant did receive notice of an upcoming civil proceeding:

- while on active duty, or
- within 90 days of termination or release from active duty;

he/she may make an application for a stay or a delay of the proceedings from the court or administrative body at any time before final judgment;²

The application to stay the proceedings must include:

- a statement why the current military duty requirements materially affect the member's ability to appear at the proceedings; and
- a date when the member will be available to appear; and
- a statement from the member's commanding officer indicating that:
 - the member's current military duty prevents his/her appearance; and
 - that military leave is not authorized for the member.

Upon receipt of the application with the two statements, the court or administrative body must stay the action for a period of 90 days or less.

- the military member may apply for **additional stays** based on continuing material affect of military duty on his/her ability to appear.
- if a court or administrative body refuses to grant additional stays, it **must appoint counsel** to represent the member in the action or proceeding.
- an application for stay does not constitute an appearance for jurisdictional purposes and will not waive any defenses.

There can be **no fines or penalties** imposed under any contract for failing to comply with the terms of the contract during the stay proceeding, unless by order of the court.

² The vacation, set aside, or reversal of a default judgment will not impair any right to title acquired by any bona fide purchaser for value under the judgment.

Federal and state statute of limitations are tolled for all proceedings for the duration of a servicemember's military service, except the statute of limitations on IRS violations.

- This tolling applies to actions brought by or brought against the servicemember.

VII. Servicemembers Are Entitled to Reduced Interest Rates:

SCRA is intended to lower the monthly financial obligations of a servicemember who enters active duty, by minimizing the effect of his/her reduced income. SCRA applies to credit card debts, car loans, mortgages, personal loans, and other similar obligations and liabilities incurred by the servicemember (or jointly with his/her spouse).

- Debt must have been incurred by the servicemember **before the member entered active duty**;
- All such debts shall not bear an interest rate more than 6% per year during the period of active duty;
- All interest in excess of 6% must be forgiven by the creditor and cannot be shifted to the principal or shifted for payment at a later time;
- The creditor must reamortize the payments on the loan based on the 6% interest rate, which will result in lower monthly payments for the servicemember;
- The definition of "interest" under SCRA includes interest on the loan, service charges, renewal charges, fees, or any other valid charges. All such additional charges combined cannot exceed the 6% annual rate of interest on a debt.
- The definition of "interest" does not include insurance premiums on the property purchased (which incurred thereon).
- This SCRA provision does NOT apply to obligations incurred by the member while on active duty.
 - Example: Servicemember has a credit card with a \$ 1,000 charged debt prior to active duty. After going on active duty, he charges another \$2,000 in credit card charges. Only the \$1,000 of the total \$3,000 debt will qualify for the interest rate reduction to 6%.
- To take advantage of the reduced interest rate on obligations incurred before going on active duty, servicemembers must:
 - Provide a creditor with written notice and a copy of the military orders; and
 - The notice must be given to the creditor at any time up to 180 days after the member's termination or release from active duty;
 - Upon receipt of proper notification, creditors must apply the 6% interest cap beginning from the member's first day of active duty.

However, the 6% interest rate cap does not apply to federal guaranteed student loans.

VIII. Servicemembers May Prevent Rental Evictions:

Absent a court order, a landlord may not evict a servicemember on active duty or his/her dependents where:

- the premises are occupied or intended as a primary residence; and
- the monthly rental payments are less than \$2,465 (if year 2004)³;
- regardless of whether the premises were rented before or after the member's entry onto active duty;

The court may adjust the rental payments in the interests of the parties.

A landlord's violation of this SCRA provision may be a criminal misdemeanor offense which is punishable by a sentence of up to one year imprisonment.

IX. Protection From Creditors On Installment Contracts:

The SCRA protects servicemembers who have contracted for the purchase, lease, or bailment of real or personal property (e.g., motor vehicle) prior to the time they entered military service

- Provided, that a deposit or installment has already been paid by the servicemember on the obligation before entering military service.

A creditor CANNOT:

- rescind or terminate an installment contract for breach of terms without a court order.
- repossess property purchased, leased or bailed by a servicemember without a court order.

A violation of this SCRA provision may be a criminal misdemeanor offense which is punishable by a sentence of up to one year imprisonment.

- it will also subject the creditor to damages for wrongful conversion of property if there was no court order;

X. Servicemember's Mortgages May Be Protected:

The SCRA protects a servicemember's obligations on any real or personal property that is secured by a mortgage, trust deed, or other loan security.

- the obligation must have been incurred before the period of military service;
- the property must still be owned by the member; and
- the alleged failure to meet the secured obligation must have occurred before or during the military service

³ Qualifying rental amount is to be adjusted each year for inflation

XI. Invalidation of Sale, Foreclosure, or Seizure of Servicemember's Property:

Any sale, foreclosure, or seizure of property in breach of a mortgage, trust deed, or similar security will be invalid, if made during the period of military service or up to 90 days thereafter.

- Exception is where it is done by court order;
- Exception is where servicemember has signed written waiver of this SCRA provision

A violation of this SCRA provision may be a criminal misdemeanor offense which is punishable by a sentence of up to one year imprisonment.

- it will also subject the violator to damages for wrongful conversion of property;

XII. Servicemembers May Terminate Leases on Premises:

The servicemember may terminate a lease for residential, professional, business, or agricultural purpose anytime:

- after entry into military service; or
- after the date of military orders for a permanent change of station (PCS) move; or
- after the date of military orders for deployment with a military unit for at least 90 days.

The PCS order or deployment order must happen after the servicemember signs the lease. To terminate a lease, the servicemember must:

- deliver to the landlord (or agent) a written termination notice, saying it is pursuant to the SCRA, along with a copy of his/her military orders
- deliver the notice and order to the landlord in person, or by mail (return receipt requested);
- for the date the termination of a lease will become effective after delivery of notice, please consult with legal counsel;

XIII. Servicemembers May Terminate Motor Vehicle Leases:

Servicemembers may terminate motor vehicle leases when

- called to active duty for 180 days or more; or
- by active duty members receiving permanent change of station (PCS) orders outside the continental U.S. (48 states); or
- deploying with a military unit for 180 days or more.
- lease should be for the servicemember or the member's dependents for personal or business transportation.

To take advantage of the SCRA, the servicemember must:

- deliver to the lessor or agent a written termination notice and a copy of the appropriate military orders; and
- return the vehicle to the lessor or agent, no later than 15 days after delivery of the written termination notice.
- deliver the notice and orders to the lessor or agent either in person, or by mail (return receipt requested)

For the date the termination of a lease will become effective after delivery of notice, please consult with legal counsel;

The SCRA prohibits the imposition of a early termination charge by the lessor;

- The servicemember is still responsible for any outstanding taxes or title and registration fees;

XIV. Servicemember's Life Insurance Policies Are Protected:

SCRA protects servicemembers' individual whole, endowment, universal, or term life insurance policies, but does not apply to Servicemembers' Group Life Insurance (SGLI) or any other group term life insurance coverages;

- Servicemembers' private, individual insurance policies will not lapse or otherwise terminate, nor forfeit due to nonpayment of premiums, while they are on active duty;
- The policy coverage cannot exceed \$250,000 or the maximum amount of coverage available through the SGLI, whichever is greater;
- The policy must have been in force for not less than 180 days before the date of the insured's entry into military service;
- An insured servicemember must apply in writing to the Department of Veterans Affairs (VA) for protection under SCRA;
- When the policy is protected under SCRA, the government will guarantee the payment of premiums and interest on premiums that become due;
- If the guaranteed amount has not been paid to the insurer before the period of protection expires, the insurer will treat that amount as a loan to the insured under the policy;

XV. Servicemember Rights Concerning Taxes on Property:

No property owned by a member or jointly with a dependent can be sold to enforce the collection of a tax which became due before or during the member's active military service without:

- a court order, and
- a determination by the court that military service does not materially affect the member's ability to pay the tax

The court may also stay the proceedings during the military service and for up to 180 days after the end of that service.

Property covered by this section is:

- personal property, including motor vehicles, owned by the member or jointly with a spouse or dependent; and
- real property used by the member or his/her dependents, employees, as a dwelling or for professional, business or agricultural purposes

If there is a failure to pay a tax or assessment on property, the interest rate assessed against the unpaid amount shall be 6% per year, without any other penalty or interest.

XVI. Servicemember's Income Tax Obligations May Be Deferred:

An income tax obligation arising either before or during military service may be deferred for the duration of that service plus up to 180 days thereafter if the member's ability to pay is materially affected by the military service:

To take advantage of this provision, the servicemember must:

- provide written notice to the taxing authority that one has entered into active military service; and
- demonstrate that military service materially affected the ability to pay the tax owed.
- deliver the notice and orders to the taxing authority in person, or by mail (return receipt requested);

No interest or penalties for nonpayment of tax will be assessed during the deferral period of military service.

These provisions of the SCRA dealing with income taxes do not apply to spouses and dependents of military personnel

- However, the protected member's income may not be added to the nonmilitary spouses' income for tax purposes.

XVII. The Need to Consult Legal Counsel:

This booklet is intended to provide a general knowledge about the rights and benefits afforded to members of our armed forces under SCRA. Because there are many finer details to this law, certain exceptions to any situation may exist. Therefore, it is advisable that servicemembers seek more information about their SCRA benefits and obligations by obtaining legal advice and assistance.

For more information, call the US Attorney's office at 602-514-7500 or 1-800-800-2570